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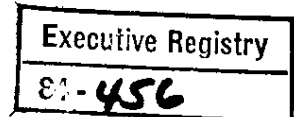
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THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220



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(With ~~Confidential~~ Attachments)

January 30, 1984

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
✓ DIRECTOR OF CENTRAL INTELLIGENCE
UNITED STATES TRADE REPRESENTATIVE
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
ASSISTANT TO THE PRESIDENT & DEPUTY TO THE CHIEF
OF STAFF
ASSISTANT TO THE PRESIDENT FOR CABINET AFFAIRS
CHAIRMAN, COUNCIL OF ECONOMIC ADVISORS
ASSISTANT TO THE PRESIDENT FOR POLICY DEVELOPMENT

SUBJECT Senior Interdepartmental Group on
International Economic Policy (SIG-IEP)

A meeting of the SIG-IEP is scheduled to be held on
Thursday, February 2, at 4:00 p.m., in Room 248, Old
Executive Office Building.

The agenda is as follows:

1. World Bank Selective Capital Increase;
- ✓ 2. Extraterritoriality;
- ✓ 3. U.S.-Japan Presidential Trip Follow-up; and
4. International Debt Update.

A discussion paper prepared by Treasury on the World
Bank Selective Capital Increase is attached. Two papers
on extraterritoriality are also attached -- a State Department
discussion paper (including a draft memo to the President)
and a comment on the State draft prepared by Treasury.
Agenda items 3 and 4 will be oral reports.

Attendance will be principal, plus one.


Donald T. Regan

Attachments

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SIG-IEP Paper

U.S. Participation in World Bank SCI

A "compromise" proposal for a World Bank Selective Capital Increase (SCI) will be considered by the Bank's Executive Board no later than February 7. The proposal would entail U.S. subscriptions of \$1,502 million of which \$131.4 million would be paid-in. We would seek funding authorization in FY 1986, and appropriations in FY 1986 and FY 1987. The Treasury Department has carefully reviewed the SCI issue and believes the United States should join other members in supporting and participating in the SCI. We view such U.S. participation as an important demonstration of support for the World Bank and our willingness to work constructively with our allies to strengthen its financial position. Participation in the SCI will also permit us to maintain our 20% shareholding in the Bank and thus our veto over any amendment of the Bank's Articles of Agreement.

The following describes the current status of SCI negotiations -- including the linkage to IDA VII -- and the position taken by the United States in the negotiations. It also discusses the budgetary implications of U.S. participation in the proposed SCI.

Discussion

The United States has traditionally been a strong supporter of "parallelism" insofar as it suggests that countries which, by virtue of their economic growth, have taken a larger quota in the IMF, should take a larger position in the Bank. The United States has also supported the practice of timing SCI's to follow closely IMF quota reviews.

In April, World Bank management proposed initiating consultations with members regarding a SCI -- a level of roughly \$17-20 billion was implied -- to "parallel" the recent increase in IMF quotas, and to bolster Bank resources and to eliminate the capital constraints on proposed lending levels. In our view, this was an attempt by management to use the IMF Quota Increase as justification for a new General Capital Increase in disguise. We held up distribution of all Bank papers which attempted to justify this position to the exclusion of all others and were finally able to obtain a more acceptable paper which listed various SCI options, ranging from \$3 billion to \$20 billion, and which preserved the U.S. veto over changes to the Articles of Agreement.

The U.S. position in the SCI negotiations has been:

- a) to focus an SCI specifically on the need to adjust shares and not as a means of supporting increased Bank lending,
- b) to try to get the cost of the SCI to the United States as low as possible, and

- c) to provide the United States with the option of subscribing a level of shares sufficient to retain the U.S. veto (i.e., 20 percent of voting power) over any amendment of the Bank's Articles of Agreement.

Status of Negotiations

It is now agreed that there will be a World Bank SCI -- to adjust country shares following the IMF quota increase -- although the size is still under discussion. However, all major donors, other than the United States, have now indicated their approval of an \$8.4 billion "compromise" level proposed by the Bank. (This \$8.4 billion figure compares with the initial Bank proposal of \$17-20 billion).

Our position on the SCI has an important linkage to the recently concluded IDA VII agreement. At the IDA negotiations substantive discussions also took place on the SCI. Japan attaches considerable importance to changing its ranking (from fifth to second position) in the share capital of the IBRD. Given Japan's relative economic weight, we viewed the Japanese objective as reasonable but recognized that this was a matter best resolved by direct negotiations among the Japanese and the three affected European countries (Germany, Britain and France). As long as the "ranking" issue remained unresolved, Japan was prepared to reduce sharply its share in IDA VII.

Following several months of difficult negotiations, the four countries reached an agreement during the IDA Deputies meeting to support the present Bank proposal with share allocations which would provide Japan with second position in the IBRD. As part of the agreement, other IDA donors agreed that the Bank's SCI proposal would be considered by the Executive Board no later than February 7, 1984. It was on this basis that Japan agreed to take an 18.7 percent share in IDA VII. (In the absence of this SCI accord, Japan's IDA VII share would have been about 6 percent.) In response to a specific question from the Japanese, the U.S. Deputy indicated we would intensively review the SCI issue within the Executive Branch and consult with the Congress, and hoped to complete this process by February 7.

In discussions among IBRD members, we have obtained explicit assurances from key donors that, if we go along with the current Bank proposal, they will support the United States in ensuring that the Bank's lending program does not exceed a conservatively defined sustainable level of lending.^{1/} Such support would mean that we will not be under pressure to subscribe to an accelerated General Capital Increase on the grounds that the Bank's lending volume would decline without a GCI. This principle is extremely

^{1/} This is defined as the level of IBRD lending to countries which can be sustained indefinitely (in nominal terms) without any further increase in Bank capital under current lending policies.

important in view of the increased pressures on the IBRD's lending program likely to result from the resource constraints of a \$9 billion IDA VII.

It is our view that U.S. participation in the SCI now proposed by the Bank coupled with these assurances on Bank lending levels is consistent with the objectives we have sought throughout the course of the SCI negotiations.

U.S. opposition to the World Bank's proposal would likely create a negotiating impasse, although technically the proposal could be approved "by a three-fourths majority of the total voting power", i.e. without U.S. support. U.S. non-support for the SCI would also generate friction with key allies, particularly Japan which attaches great importance to an early SCI increasing Japan's voting share in the Bank. Japan's firm linkage of its IDA VII share to its voting position in the Bank means that a SCI impasse could also unravel or delay the IDA VII agreement.

Politically, we do not want to be left isolated now that the Germans, French, British, and Japanese have resolved the ranking issue. Our concerns over the Bank's operations have now been well conveyed by the \$750 million IDA VII decision, and it is important that we demonstrate to the Bank, our close allies, and the developing countries, that we do not oppose the Bank or multilateral institutions in principle.

Budgetary Implications

Projections of the cost (of subscriptions) if we were to subscribe to the SCI level now supported by all other major donors and Bank Management is \$1,502 million of which 8.75% or \$131.4 million would be paid-in.^{2/} Preserving a U.S. veto would also require subscribing to the \$148.5 million of IBRD capital (\$14.85 million paid-in) still outstanding from the 1970 SCI. Authorizing legislation for the \$1,502 million subscription would be submitted for FY 1986, with the necessary appropriations requested in FY 1986 and FY 1987. If subscriptions for the new SCI and outstanding 1970 SCI shares were included in the FY 1986 and 1987 budgets, the budget authority request would be increased by a total of approximately \$73.2 million above the current planning level in both FY 1986 and FY 1987. A program limitation for approximately \$752.2 million would be requested in both FY 1986 and FY 1987 for subscription to callable capital.

In the event of a new World Bank General Capital Increase, we would seek to defer any new U.S. GCI appropriations until FY 1988.

Note: When Treasury officials raised the SCI issue in a December 15 meeting with key Congressional staffers, the staffers main concern was that we avoid seeking any SCI funding in calendar 1984.

^{2/} The last World Bank SCI in 1977 had a U.S. share of \$1,586.9 million, 10 percent or \$156.89 million of which was paid-in.

~~CONFIDENTIAL~~**"Extraterritoriality" - Managing the Problem****INTRODUCTION**

The extraterritorial application of U.S. laws, regulations and court orders is causing acute problems with a number of friendly countries. These countries are turning increasingly to domestic legal measures to block such actions, which they consider to be U.S. intrusions into their sovereignty. They are especially disturbed when they think the U.S. controls companies or activities in their territory in accordance with U.S. interests, policies and laws, regardless of their own. If not properly managed, these problems can injure important U.S. political, economic and law enforcement interests and can impose unfair burdens on the firms and individuals caught between conflicting requirements of the U.S. and another country. We are being pressed bilaterally and multilaterally to modify certain of our laws, regulations and practices or, at minimum, to agree to principles of restraint and procedures of prior notice and consultation.

BACKGROUND

Extraterritoriality ("E.T.") problems can arise in a variety of areas. The current E.T. agenda of our friends includes export or other controls unilaterally imposed by the United States on foreign subsidiaries of U.S. firms (under the Export Administration Act, including antiboycott provisions, Trading with the Enemy Act, and IEEPA); re-export controls, particularly those going beyond the COCOM consensus and those imposed after the original export was made ("retroactive" controls); application of U.S. antitrust law (by private law suit or government prosecution) to conduct of non-U.S. firms occurring substantially outside the United States; use of unilateral U.S. legal process rather than mutual assistance channels in off-shore discovery (particularly where U.S. subpoenas of documents located abroad conflict with foreign bank or business secrecy laws or foreign standards on discovery); and use of the unitary tax method by California and other states.

Although these have been important issues between us and the U.K. and a number of other countries for a long time, the pipeline sanctions increased sensitivities. Since the diplomatic furor over those sanctions abated, a number of our allies have continued to press us, at high levels, for changes in U.S. law and practice and for commitments to self-restraint,

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prior notice and consultation on extraterritorial U.S. action (legislative, regulatory, or enforcement) which may impact upon them. Canada and the United Kingdom have raised E.T. issues prominently in recent meetings and communications with the President and the Secretary of State. The U.K. has proposed establishing E.T. coordination monitored at the Deputy Secretary of State level and is pressing for some agreed arrangements by summer. We held one consultation with them in November and plan the next round for early February. We are engaged in a series of similar consultations with Canada which began last spring. The O.E.C.D., which has had prior notice and consultation arrangements in the antitrust area since 1967, began to study the E.T. issues more generally in early 1983 in its Committee on International Investment and Multinational Enterprise (CIME). The matter will figure in the ministerial level spring 1984 O.E.C.D. review.

In these bilateral and multilateral consultations, our allies argue that the interests of the territorial sovereign take legal precedence over the interests of all other states claiming jurisdiction on non-territorial bases. The United States has countered by emphasizing that the real need for measures reaching persons, conduct or documents outside a state's own territory precludes any simple solution, such as a commitment to a principle of "territorial primacy". We have called for recognition that several jurisdictions can have a legitimate interest in the same conduct, although comity and balancing of interests will often require deferring to the state in which the conduct is located.

We have urged that these consultations focus on managing and mitigating the problems which can arise when conflicting requirements are imposed and on seeking mutual accommodation where we can. While our allies are not abandoning their positions of principle or the threat of further blocking or retaliatory measures, we are seeing some willingness to turn down the heat and try our conflict management approach, provided we work out promising arrangements, such as prior notice and consultation. In the wake of our November U.K. "E.T. hotline" consultations, we are setting up a U.S.-U.K. work program to explore the possibilities and the problems in a number of areas. We are seeking to keep future rounds of Canadian consultations focussed on practical approaches, after a spring round of meetings on principles produced only an

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agreed statement of our disagreement. In November, the United Kingdom proposed an O.E.C.D. declaration which would state certain principles as well as commit members to prior notice and consultation. We have reserved our position on the principles and, pending internal U.S. consideration, on prior notice as well.

DISCUSSION

Beyond the diplomatic and political reaction, we have seen that unilateral U.S. assertions of extraterritorial jurisdiction can harm other very important U.S. interests. For example, U.S. subpoenas for foreign-located documents can provoke blocking actions and secrecy laws which frustrate long term U.S. law enforcement interests in obtaining foreign evidence. Re-export controls, while vital to the integrity of a basic export control system, if imposed or changed retroactively or in situations exceeding the basic allied consensus, can lead foreign companies interested in export to treat U.S. companies as least preferred sources, as with the European effort to engineer U.S. engines and avionics out of the Airbus. Imposing U.S. controls on the activities of foreign subsidiaries of U.S. corporations can adversely affect the investment opportunities of Americans abroad. There is, in short, a heavy and growing price to be paid for proceeding unilaterally in defiance of the increasingly united opinion of important friendly nations.

The number, complexity and differences of issues under this "extraterritoriality" rubric preclude any simple across-the-board solutions. Important United States interests may impel us to act in ways which raise extraterritoriality concerns among friendly countries, acts involving their sovereign interest or conflicting with their laws or policies. If we wish to avoid harm to our bilateral relations and to have our allies' cooperation on export, law enforcement and other international matters, we must consider those interests when deciding whether to take such actions. To assure that we have weighed all the factors, considered alternatives to unilateral action, and sought to avoid unnecessary problems, we need to coordinate such decisions within the U.S. government at levels which can bring the political and international considerations to bear in a consistent fashion.

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Further, it is difficult to deny the request of friendly countries to consult about such actions. While circumstances may not always permit, consultation with potentially affected friendly countries must occur before action is taken if it is to be effective in avoiding political shocks and unnecessary conflicts, accurately identifying foreign concerns and reaching accommodations where possible.

Coordination and management of United States policy in this area will be difficult, given the variety of agencies, some independent of the Executive Branch, which can take action with potential for such conflicts.

OPTIONS

1. Extend and improve internal U.S.G. inter-agency coordination and make properly qualified, non-binding arrangements bilaterally and in the O.E.C.D. for prior notice to and consultation with other governments. Independent regulatory agencies would be invited to participate. The attached memorandum to the President would implement this option. How?

Pros:

- Would allow the U.S. to be responsive to the increasing concern of important friendly nations, while reserving full rights and essential freedom of action under U.S. law and regulation.
- Would provide opportunities to avoid unnecessary disputes, explore alternatives, and minimize problems.

Cons:

- Would complicate the task of various agencies by requiring notice and delay for internal and possibly foreign consultations and could make substantial demands on the resources of the offices involved.
- Would give notified foreign governments the opportunity to take preemptive action which might undercut or block the contemplated U.S. action.

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2. Extend and improve internal U.S.G. inter-agency coordination and make properly qualified, non-binding arrangements bilaterally for prior notice to and consultation with other governments. Independent regulatory agencies would be invited to participate. For the time being, restrict any undertaking in the O.E.C.D. to considering prior notice and consultation under appropriate bilateral arrangements. Should this option be chosen, the memorandum for the President would be modified by eliminating the O.E.C.D. reference in the penultimate sentence of the attached draft.

Pros:

- Same as option 1.
- Focus on bilateral arrangements might assist in obtaining a quid pro quo where appropriate.

Cons:

- Would be taken by our friends as lack of support for notice and consultation mechanisms as mutually beneficial on their own merits, without demanding an additional quid pro quo bilaterally.
- Could impair our efforts to secure a reasonable consensus on this and other subjects in the negotiations for the O.E.C.D. 1984 review.

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MEMORANDUM FOR THE PRESIDENT

SUBJECT: Extraterritoriality - Managing the Problem

The extraterritorial application of U.S. laws, regulations and court orders is causing acute problems with a number of friendly countries. These countries are turning increasingly to domestic legal measures to block such actions, which they consider to be U.S. intrusions into their sovereignty. They are especially disturbed when they think the U.S. controls companies or activities in their territory in accordance with U.S. interests, policies and laws, regardless of their own. If not properly managed, these problems can injure important U.S. political, economic and law enforcement interests and can impose unfair burdens on the firms and individuals caught between conflicting requirements of the U.S. and another country. We are being pressed bilaterally and multilaterally to modify certain of our laws, regulations and practices or, at minimum, to agree to principles of restraint and procedures of prior notice and consultation.

The SIG-IEP, with the concurrence of the Department of Justice, recommends that you take three steps:

- First, establish an internal interagency "hotline", by directing that the State Department be given advance notice of and consulted when actions are being contemplated which are likely to have significant extraterritorial dimensions.
- Second, direct that, whenever feasible in light of our foreign relations interests and the responsibilities of agencies proposing to take such actions, friendly foreign governments be notified in advance and afforded a meaningful opportunity for consultations.
- Third, invite agencies independent of the Executive Branch to participate in these hotline and international notice and consultation arrangements.

In effect, this would generalize the arrangements which have been in place for a number of years in the antitrust area. Such an internal "hotline" and international notice and consultation may impose burdens on a range of agencies and officials, but would allow us to weigh all the relevant U.S.

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interests involved in any such proposed action at the necessary political level. These steps would be responsive to a significant part of the international concern while preserving our essential freedom of action.

If you approve, we would agree to include properly qualified language regarding prior notice and consultation in the understandings and arrangements on "extraterritoriality" which are currently under discussion bilaterally with the U.K. and Canada and multilaterally with our O.E.C.D. partners. You may wish to use an early Cabinet meeting to inform the Cabinet Departments and other agencies of this policy decision and to make clear the importance you attach to the proper handling of these sensitive issues.

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Treasury Department Position on State Department Paper
Concerning Managing the Extraterritoriality Problem

Treasury Position

The State Department paper on managing the extraterritoriality problem is a useful introduction to this complex problem. The Treasury Department agrees that the problem demands prompt attention at the highest levels; ways must be found to mitigate, to the extent possible, the problems caused to U.S. relations with friendly countries by the extraterritorial application of U.S. laws.

However, for the reasons briefly set out below, it is the Treasury Department's position that it is premature for the SIG-IEP to recommend options to the President, at this time. Treasury proposes that State convene a working group of the IG-IEP and that the working group submit to the IG-IEP for review an agreed paper for the SIG-IEP, as well as an options memorandum for the President on managing the extraterritorial problem by the end of February. These two documents could then be considered by the SIG-IEP by mid-March.

Background

- The State paper does not contain several options which need to be considered. For example, it omits options which Treasury believes merit study and which would give primacy to the protection of life and property and the need for immediate action in the law enforcement area, considerations which sometimes preclude the possibility of consultation with, or even notice to, both other countries and other agencies of the U.S. Government.

- The State paper does not give the positions of a number of concerned agencies concerning the management of the extraterritorial problem. These agencies, like Treasury, did not participate in the drafting of the State paper, even though they face a wide variety of issues with respect to extraterritoriality.

- The State paper advocates the establishment of an internal hotline to the State Department which agencies would be required to use prior to taking any extraterritorial action. The Treasury Department believes that this issue should be studied more closely.

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- The State paper nowhere articulates Treasury's position that it is very necessary that any decision concerning consultation and notice be left with the relevant law enforcement agencies and that this be clearly indicated in any statement of U.S. policy for internal or external purposes.

- The State paper nowhere articulates Treasury's position that the U.S. Government should not agree to a consultation requirement in any bilateral agreement without a corresponding concession from the foreign country regarding law enforcement cooperation.

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